

SENATE, No. 886

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 17, 2012

Sponsored by:

Senator DIANE B. ALLEN

District 7 (Burlington)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Expands civil rights protections to include pregnancy and breast-feeding; requires employers to provide daily break to breast-feeding mothers.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/4/2012)

1 AN ACT concerning pregnancy and breast-feeding in the workplace,
2 amending P.L.1945, c.169 and supplementing chapter 2 of Title
3 34 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 11 of P.L.1945, c.169 (C.10:5-12) is amended to
9 read as follows:

10 11. It shall be an unlawful employment practice, or, as the case
11 may be, an unlawful discrimination:

12 a. For an employer, because of the race, creed, color, national
13 origin, ancestry, age, marital status, civil union status, domestic
14 partnership status, affectional or sexual orientation, genetic
15 information, sex, gender identity or expression, disability or
16 atypical hereditary cellular or blood trait of any individual, or
17 because of the liability for service in the Armed Forces of the
18 United States or the nationality of any individual, or because of the
19 refusal to submit to a genetic test or make available the results of a
20 genetic test to an employer, or on the basis of pregnancy, childbirth,
21 breast-feeding or expressing milk or related medical conditions, to
22 refuse to hire or employ or to bar or to discharge or require to retire,
23 unless justified by lawful considerations other than age, from
24 employment such individual or to discriminate against such
25 individual in compensation or in terms, conditions or privileges of
26 employment; provided, however, it shall not be an unlawful
27 employment practice to refuse to accept for employment an
28 applicant who has received a notice of induction or orders to report
29 for active duty in the armed forces; provided further that nothing
30 herein contained shall be construed to bar an employer from
31 refusing to accept for employment any person on the basis of sex in
32 those certain circumstances where sex is a bona fide occupational
33 qualification, reasonably necessary to the normal operation of the
34 particular business or enterprise; provided further that nothing
35 herein contained shall be construed to bar an employer from
36 refusing to accept for employment or to promote any person over 70
37 years of age; provided further that it shall not be an unlawful
38 employment practice for a club exclusively social or fraternal to use
39 club membership as a uniform qualification for employment, or for
40 a religious association or organization to utilize religious affiliation
41 as a uniform qualification in the employment of clergy, religious
42 teachers or other employees engaged in the religious activities of
43 the association or organization, or in following the tenets of its
44 religion in establishing and utilizing criteria for employment of an
45 employee; provided further, that it shall not be an unlawful

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 employment practice to require the retirement of any employee
2 who, for the two-year period immediately before retirement, is
3 employed in a bona fide executive or a high policy-making position,
4 if that employee is entitled to an immediate non-forfeitable annual
5 retirement benefit from a pension, profit sharing, savings or
6 deferred retirement plan, or any combination of those plans, of the
7 employer of that employee which equals in the aggregate at least
8 \$27,000.00; and provided further that an employer may restrict
9 employment to citizens of the United States where such restriction
10 is required by federal law or is otherwise necessary to protect the
11 national interest.

12 The provisions of subsections a. and b. of section 57 of
13 P.L.2003, c.246 (C.34:11A-20), and the provisions of section 58 of
14 P.L.2003, c.246 (C.26:8A-11), shall not be deemed to be an
15 unlawful discrimination under P.L.1945, c.169 (C.10:5-1 et seq.).

16 For the purposes of this subsection, a "bona fide executive" is a
17 top level employee who exercises substantial executive authority
18 over a significant number of employees and a large volume of
19 business. A "high policy-making position" is a position in which a
20 person plays a significant role in developing policy and in
21 recommending the implementation thereof.

22 b. For a labor organization, because of the race, creed, color,
23 national origin, ancestry, age, marital status, civil union status,
24 domestic partnership status, affectional or sexual orientation,
25 gender identity or expression, disability or sex of any individual, or
26 because of the liability for service in the Armed Forces of the
27 United States or nationality of any individual, or on the basis of
28 pregnancy, childbirth, breast-feeding or expressing milk or related
29 medical conditions, to exclude or to expel from its membership
30 such individual or to discriminate in any way against any of its
31 members, against any applicant for, or individual included in, any
32 apprentice or other training program or against any employer or any
33 individual employed by an employer; provided, however, that
34 nothing herein contained shall be construed to bar a labor
35 organization from excluding from its apprentice or other training
36 programs any person on the basis of sex in those certain
37 circumstances where sex is a bona fide occupational qualification
38 reasonably necessary to the normal operation of the particular
39 apprentice or other training program.

40 c. For any employer or employment agency to print or circulate
41 or cause to be printed or circulated any statement, advertisement or
42 publication, or to use any form of application for employment, or to
43 make an inquiry in connection with prospective employment, which
44 expresses, directly or indirectly, any limitation, specification or
45 discrimination as to race, creed, color, national origin, ancestry,
46 age, marital status, civil union status, domestic partnership status,
47 affectional or sexual orientation, gender identity or expression,
48 disability, nationality or sex or liability of any applicant for

1 employment for service in the Armed Forces of the United States,
2 or on the basis of pregnancy, childbirth, breast-feeding or
3 expressing milk or related medical conditions, or any intent to make
4 any such limitation, specification or discrimination, unless based
5 upon a bona fide occupational qualification.

6 d. For any person to take reprisals against any person because
7 that person has opposed any practices or acts forbidden under this
8 act or because that person has filed a complaint, testified or assisted
9 in any proceeding under this act or to coerce, intimidate, threaten or
10 interfere with any person in the exercise or enjoyment of, or on
11 account of that person having aided or encouraged any other person
12 in the exercise or enjoyment of, any right granted or protected by
13 this act.

14 e. For any person, whether an employer or an employee or not,
15 to aid, abet, incite, compel or coerce the doing of any of the acts
16 forbidden under this act, or to attempt to do so.

17 f. (1) For any owner, lessee, proprietor, manager,
18 superintendent, agent, or employee of any place of public
19 accommodation directly or indirectly to refuse, withhold from or
20 deny to any person any of the accommodations, advantages,
21 facilities or privileges thereof, or to discriminate against any person
22 in the furnishing thereof, or directly or indirectly to publish,
23 circulate, issue, display, post or mail any written or printed
24 communication, notice, or advertisement to the effect that any of
25 the accommodations, advantages, facilities, or privileges of any
26 such place will be refused, withheld from, or denied to any person
27 on account of the race, creed, color, national origin, ancestry,
28 marital status, civil union status, domestic partnership status, sex,
29 gender identity or expression, affectional or sexual orientation,
30 disability or nationality of such person, or that the patronage or
31 custom thereat of any person of any particular race, creed, color,
32 national origin, ancestry, marital status, civil union status, domestic
33 partnership status, sex, gender identity or expression, affectional or
34 sexual orientation, disability or nationality is unwelcome,
35 objectionable or not acceptable, desired or solicited, and the
36 production of any such written or printed communication, notice or
37 advertisement, purporting to relate to any such place and to be made
38 by any owner, lessee, proprietor, superintendent or manager thereof,
39 shall be presumptive evidence in any action that the same was
40 authorized by such person; provided, however, that nothing
41 contained herein shall be construed to bar any place of public
42 accommodation which is in its nature reasonably restricted
43 exclusively to individuals of one sex, and which shall include but
44 not be limited to any summer camp, day camp, or resort camp,
45 bathhouse, dressing room, swimming pool, gymnasium, comfort
46 station, dispensary, clinic or hospital, or school or educational
47 institution which is restricted exclusively to individuals of one sex,
48 provided individuals shall be admitted based on their gender

1 identity or expression, from refusing, withholding from or denying
2 to any individual of the opposite sex any of the accommodations,
3 advantages, facilities or privileges thereof on the basis of sex;
4 provided further, that the foregoing limitation shall not apply to any
5 restaurant as defined in R.S.33:1-1 or place where alcoholic
6 beverages are served.

7 (2) Notwithstanding the definition of "a place of public
8 accommodation" as set forth in subsection l. of section 5 of
9 P.L.1945, c.169 (C.10:5-5), for any owner, lessee, proprietor,
10 manager, superintendent, agent, or employee of any private club or
11 association to directly or indirectly refuse, withhold from or deny to
12 any individual who has been accepted as a club member and has
13 contracted for or is otherwise entitled to full club membership any
14 of the accommodations, advantages, facilities or privileges thereof,
15 or to discriminate against any member in the furnishing thereof on
16 account of the race, creed, color, national origin, ancestry, marital
17 status, civil union status, domestic partnership status, sex, gender
18 identity, or expression, affectional or sexual orientation, disability
19 or nationality of such person.

20 In addition to the penalties otherwise provided for a violation of
21 P.L.1945, c.169 (C.10:5-1 et seq.), if the violator of paragraph (2)
22 of subsection f. of this section is the holder of an alcoholic beverage
23 license issued under the provisions of R.S.33:1-12 for that private
24 club or association, the matter shall be referred to the Director of
25 the Division of Alcoholic Beverage Control who shall impose an
26 appropriate penalty in accordance with the procedures set forth in
27 R.S.33:1-31.

28 g. For any person, including but not limited to, any owner,
29 lessee, sublessee, assignee or managing agent of, or other person
30 having the right of ownership or possession of or the right to sell,
31 rent, lease, assign, or sublease any real property or part or portion
32 thereof, or any agent or employee of any of these:

33 (1) To refuse to sell, rent, lease, assign, or sublease or otherwise
34 to deny to or withhold from any person or group of persons any real
35 property or part or portion thereof because of race, creed, color,
36 national origin, ancestry, marital status, civil union status, domestic
37 partnership status, sex, gender identity or expression, affectional or
38 sexual orientation, familial status, disability, nationality, or source
39 of lawful income used for rental or mortgage payments;

40 (2) To discriminate against any person or group of persons
41 because of race, creed, color, national origin, ancestry, marital
42 status, civil union status, domestic partnership status, sex, gender
43 identity or expression, affectional or sexual orientation, familial
44 status, disability, nationality or source of lawful income used for
45 rental or mortgage payments in the terms, conditions or privileges
46 of the sale, rental or lease of any real property or part or portion
47 thereof or in the furnishing of facilities or services in connection
48 therewith;

1 (3) To print, publish, circulate, issue, display, post or mail, or
2 cause to be printed, published, circulated, issued, displayed, posted
3 or mailed any statement, advertisement, publication or sign, or to
4 use any form of application for the purchase, rental, lease,
5 assignment or sublease of any real property or part or portion
6 thereof, or to make any record or inquiry in connection with the
7 prospective purchase, rental, lease, assignment, or sublease of any
8 real property, or part or portion thereof which expresses, directly or
9 indirectly, any limitation, specification or discrimination as to race,
10 creed, color, national origin, ancestry, marital status, civil union
11 status, domestic partnership status, sex, gender identity, or
12 expression, affectional or sexual orientation, familial status,
13 disability, nationality, or source of lawful income used for rental or
14 mortgage payments, or any intent to make any such limitation,
15 specification or discrimination, and the production of any such
16 statement, advertisement, publicity, sign, form of application,
17 record, or inquiry purporting to be made by any such person shall
18 be presumptive evidence in any action that the same was authorized
19 by such person; provided, however, that nothing contained in this
20 subsection shall be construed to bar any person from refusing to
21 sell, rent, lease, assign or sublease or from advertising or recording
22 a qualification as to sex for any room, apartment, flat in a dwelling
23 or residential facility which is planned exclusively for and occupied
24 by individuals of one sex to any individual of the exclusively
25 opposite sex on the basis of sex provided individuals shall be
26 qualified based on their gender identity or expression;

27 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
28 to deny to or withhold from any person or group of persons any real
29 property or part or portion thereof because of the source of any
30 lawful income received by the person or the source of any lawful
31 rent payment to be paid for the real property; or

32 (5) To refuse to rent or lease any real property to another person
33 because that person's family includes children under 18 years of
34 age, or to make an agreement, rental or lease of any real property
35 which provides that the agreement, rental or lease shall be rendered
36 null and void upon the birth of a child. This paragraph shall not
37 apply to housing for older persons as defined in subsection mm. of
38 section 5 of P.L.1945, c.169 (C.10:5-5).

39 h. For any person, including but not limited to, any real estate
40 broker, real estate salesperson, or employee or agent thereof:

41 (1) To refuse to sell, rent, assign, lease or sublease, or offer for
42 sale, rental, lease, assignment, or sublease any real property or part
43 or portion thereof to any person or group of persons or to refuse to
44 negotiate for the sale, rental, lease, assignment, or sublease of any
45 real property or part or portion thereof to any person or group of
46 persons because of race, creed, color, national origin, ancestry,
47 marital status, civil union status, domestic partnership status,
48 familial status, sex, gender identity or expression, affectional or

1 sexual orientation, disability, nationality, or source of lawful
2 income used for rental or mortgage payments, or to represent that
3 any real property or portion thereof is not available for inspection,
4 sale, rental, lease, assignment, or sublease when in fact it is so
5 available, or otherwise to deny or withhold any real property or any
6 part or portion of facilities thereof to or from any person or group of
7 persons because of race, creed, color, national origin, ancestry,
8 marital status, civil union status, domestic partnership status,
9 familial status, sex, gender identity or expression, affectional or
10 sexual orientation, disability or nationality;

11 (2) To discriminate against any person because of race, creed,
12 color, national origin, ancestry, marital status, civil union status,
13 domestic partnership status, familial status, sex, gender identity or
14 expression, affectional or sexual orientation, disability, nationality,
15 or source of lawful income used for rental or mortgage payments in
16 the terms, conditions or privileges of the sale, rental, lease,
17 assignment or sublease of any real property or part or portion
18 thereof or in the furnishing of facilities or services in connection
19 therewith;

20 (3) To print, publish, circulate, issue, display, post, or mail, or
21 cause to be printed, published, circulated, issued, displayed, posted
22 or mailed any statement, advertisement, publication or sign, or to
23 use any form of application for the purchase, rental, lease,
24 assignment, or sublease of any real property or part or portion
25 thereof or to make any record or inquiry in connection with the
26 prospective purchase, rental, lease, assignment, or sublease of any
27 real property or part or portion thereof which expresses, directly or
28 indirectly, any limitation, specification or discrimination as to race,
29 creed, color, national origin, ancestry, marital status, civil union
30 status, domestic partnership status, familial status, sex, gender
31 identity or expression, affectional or sexual orientation, disability,
32 nationality, or source of lawful income used for rental or mortgage
33 payments or any intent to make any such limitation, specification or
34 discrimination, and the production of any such statement,
35 advertisement, publicity, sign, form of application, record, or
36 inquiry purporting to be made by any such person shall be
37 presumptive evidence in any action that the same was authorized by
38 such person; provided, however, that nothing contained in this
39 subsection h., shall be construed to bar any person from refusing to
40 sell, rent, lease, assign or sublease or from advertising or recording
41 a qualification as to sex for any room, apartment, flat in a dwelling
42 or residential facility which is planned exclusively for and occupied
43 exclusively by individuals of one sex to any individual of the
44 opposite sex on the basis of sex, provided individuals shall be
45 qualified based on their gender identity or expression;

46 (4) To refuse to sell, rent, lease, assign, or sublease or otherwise
47 to deny to or withhold from any person or group of persons any real
48 property or part or portion thereof because of the source of any

1 lawful income received by the person or the source of any lawful
2 rent payment to be paid for the real property; or

3 (5) To refuse to rent or lease any real property to another person
4 because that person's family includes children under 18 years of
5 age, or to make an agreement, rental or lease of any real property
6 which provides that the agreement, rental or lease shall be rendered
7 null and void upon the birth of a child. This paragraph shall not
8 apply to housing for older persons as defined in subsection mm. of
9 section 5 of P.L.1945, c.169 (C.10:5-5).

10 i. For any person, bank, banking organization, mortgage
11 company, insurance company or other financial institution, lender
12 or credit institution involved in the making or purchasing of any
13 loan or extension of credit, for whatever purpose, whether secured
14 by residential real estate or not, including but not limited to
15 financial assistance for the purchase, acquisition, construction,
16 rehabilitation, repair or maintenance of any real property or part or
17 portion thereof or any agent or employee thereof:

18 (1) To discriminate against any person or group of persons
19 because of race, creed, color, national origin, ancestry, marital
20 status, civil union status, domestic partnership status, sex, gender
21 identity or expression, affectional or sexual orientation, disability,
22 familial status or nationality, in the granting, withholding,
23 extending, modifying, renewing, or purchasing, or in the fixing of
24 the rates, terms, conditions or provisions of any such loan,
25 extension of credit or financial assistance or purchase thereof or in
26 the extension of services in connection therewith;

27 (2) To use any form of application for such loan, extension of
28 credit or financial assistance or to make record or inquiry in
29 connection with applications for any such loan, extension of credit
30 or financial assistance which expresses, directly or indirectly, any
31 limitation, specification or discrimination as to race, creed, color,
32 national origin, ancestry, marital status, civil union status, domestic
33 partnership status, sex, gender identity or expression, affectional or
34 sexual orientation, disability, familial status or nationality or any
35 intent to make any such limitation, specification or discrimination;
36 unless otherwise required by law or regulation to retain or use such
37 information;

38 (3) (Deleted by amendment, P.L.2003, c.180).

39 (4) To discriminate against any person or group of persons
40 because of the source of any lawful income received by the person
41 or the source of any lawful rent payment to be paid for the real
42 property; or

43 (5) To discriminate against any person or group of persons
44 because that person's family includes children under 18 years of
45 age, or to make an agreement or mortgage which provides that the
46 agreement or mortgage shall be rendered null and void upon the
47 birth of a child. This paragraph shall not apply to housing for older

1 persons as defined in subsection mm. of section 5 of P.L.1945,
2 c.169 (C.10:5-5).

3 j. For any person whose activities are included within the
4 scope of this act to refuse to post or display such notices concerning
5 the rights or responsibilities of persons affected by this act as the
6 Attorney General may by regulation require.

7 k. For any real estate broker, real estate salesperson or
8 employee or agent thereof or any other individual, corporation,
9 partnership, or organization, for the purpose of inducing a
10 transaction for the sale or rental of real property from which
11 transaction such person or any of its members may benefit
12 financially, to represent that a change has occurred or will or may
13 occur in the composition with respect to race, creed, color, national
14 origin, ancestry, marital status, civil union status, domestic
15 partnership status, familial status, sex, gender identity or
16 expression, affectional or sexual orientation, disability, nationality,
17 or source of lawful income used for rental or mortgage payments of
18 the owners or occupants in the block, neighborhood or area in
19 which the real property is located, and to represent, directly or
20 indirectly, that this change will or may result in undesirable
21 consequences in the block, neighborhood or area in which the real
22 property is located, including, but not limited to the lowering of
23 property values, an increase in criminal or anti-social behavior, or a
24 decline in the quality of schools or other facilities.

25 l. For any person to refuse to buy from, sell to, lease from or
26 to, license, contract with, or trade with, provide goods, services or
27 information to, or otherwise do business with any other person on
28 the basis of the race, creed, color, national origin, ancestry, age,
29 sex, gender identity or expression, affectional or sexual orientation,
30 marital status, civil union status, domestic partnership status,
31 liability for service in the Armed Forces of the United States,
32 disability, nationality, or source of lawful income used for rental or
33 mortgage payments of such other person or of such other person's
34 spouse, partners, members, stockholders, directors, officers,
35 managers, superintendents, agents, employees, business associates,
36 suppliers, or customers. This subsection shall not prohibit refusals
37 or other actions (1) pertaining to employee-employer collective
38 bargaining, labor disputes, or unfair labor practices, or (2) made or
39 taken in connection with a protest of unlawful discrimination or
40 unlawful employment practices.

41 m. For any person to:

42 (1) Grant or accept any letter of credit or other document which
43 evidences the transfer of funds or credit, or enter into any contract
44 for the exchange of goods or services, where the letter of credit,
45 contract, or other document contains any provisions requiring any
46 person to discriminate against or to certify that he, she or it has not
47 dealt with any other person on the basis of the race, creed, color,
48 national origin, ancestry, age, sex, gender identity or expression,

1 affectional or sexual orientation, marital status, civil union status,
2 domestic partnership status, disability, liability for service in the
3 Armed Forces of the United States, or nationality of such other
4 person or of such other person's spouse, partners, members,
5 stockholders, directors, officers, managers, superintendents, agents,
6 employees, business associates, suppliers, or customers. (2)

7 Refuse to grant or accept any letter of credit or other document
8 which evidences the transfer of funds or credit, or refuse to enter
9 into any contract for the exchange of goods or services, on the
10 ground that it does not contain such a discriminatory provision or
11 certification.

12 The provisions of this subsection shall not apply to any letter of
13 credit, contract, or other document which contains any provision
14 pertaining to employee-employer collective bargaining, a labor
15 dispute or an unfair labor practice, or made in connection with the
16 protest of unlawful discrimination or an unlawful employment
17 practice, if the other provisions of such letter of credit, contract, or
18 other document do not otherwise violate the provisions of this
19 subsection.

20 n. For any person to aid, abet, incite, compel, coerce, or induce
21 the doing of any act forbidden by subsections l. and m. of section
22 11 of P.L.1945, c.169 (C.10:5-12), or to attempt, or to conspire to
23 do so. Such prohibited conduct shall include, but not be limited to:

24 (1) Buying from, selling to, leasing from or to, licensing,
25 contracting with, trading with, providing goods, services, or
26 information to, or otherwise doing business with any person
27 because that person does, or agrees or attempts to do, any such act
28 or any act prohibited by this subsection; or

29 (2) Boycotting, commercially blacklisting or refusing to buy
30 from, sell to, lease from or to, license, contract with, provide goods,
31 services or information to, or otherwise do business with any person
32 because that person has not done or refuses to do any such act or
33 any act prohibited by this subsection; provided that this subsection
34 shall not prohibit refusals or other actions either pertaining to
35 employee-employer collective bargaining, labor disputes, or unfair
36 labor practices, or made or taken in connection with a protest of
37 unlawful discrimination or unlawful employment practices.

38 o. For any multiple listing service, real estate brokers'
39 organization or other service, organization or facility related to the
40 business of selling or renting dwellings to deny any person access
41 to or membership or participation in such organization, or to
42 discriminate against such person in the terms or conditions of such
43 access, membership, or participation, on account of race, creed,
44 color, national origin, ancestry, age, marital status, civil union
45 status, domestic partnership status, familial status, sex, gender
46 identity or expression, affectional or sexual orientation, disability or
47 nationality.

1 p. Nothing in the provisions of this section shall affect the
2 ability of an employer to require employees to adhere to reasonable
3 workplace appearance, grooming and dress standards not precluded
4 by other provisions of State or federal law, except that an employer
5 shall allow an employee to appear, groom and dress consistent with
6 the employee's gender identity or expression.

7 q. (1) For any employer to impose upon a person as a condition
8 of obtaining or retaining employment, including opportunities for
9 promotion, advancement or transfers, any terms or conditions that
10 would require a person to violate or forego a sincerely held
11 religious practice or religious observance, including but not limited
12 to the observance of any particular day or days or any portion
13 thereof as a Sabbath or other holy day in accordance with the
14 requirements of the religion or religious belief, unless, after
15 engaging in a bona fide effort, the employer demonstrates that it is
16 unable to reasonably accommodate the employee's religious
17 observance or practice without undue hardship on the conduct of the
18 employer's business. Notwithstanding any other provision of law to
19 the contrary, an employee shall not be entitled to premium wages or
20 premium benefits for work performed during hours to which those
21 premium wages or premium benefits would ordinarily be
22 applicable, if the employee is working during those hours only as an
23 accommodation to his religious requirements. Nothing in this
24 subsection q. shall be construed as reducing:

25 (a) The number of the hours worked by the employee which are
26 counted towards the accruing of seniority, pension or other benefits;
27 or

28 (b) Any premium wages or benefits provided to an employee
29 pursuant to a collective bargaining agreement.

30 (2) For an employer to refuse to permit an employee to utilize
31 leave, as provided for in this subsection q., which is solely used to
32 accommodate the employee's sincerely held religious observance or
33 practice. Except where it would cause an employer to incur an
34 undue hardship, no person shall be required to remain at his place
35 of employment during any day or days or portion thereof that, as a
36 requirement of his religion, he observes as his Sabbath or other holy
37 day, including a reasonable time prior and subsequent thereto for
38 travel between his place of employment and his home; provided that
39 any such absence from work shall, wherever practicable in the
40 reasonable judgment of the employer, be made up by an equivalent
41 amount of time and work at some other mutually convenient time,
42 or shall be charged against any leave with pay ordinarily granted,
43 other than sick leave, and any such absence not so made up or
44 charged, may be treated by the employer of that person as leave
45 taken without pay.

46 (3) (a) For purposes of this subsection q., "undue hardship"
47 means an accommodation requiring unreasonable expense or
48 difficulty, unreasonable interference with the safe or efficient

1 operation of the workplace or a violation of a bona fide seniority
2 system or a violation of any provision of a bona fide collective
3 bargaining agreement.

4 (b) In determining whether the accommodation constitutes an
5 undue hardship, the factors considered shall include:

6 (i) The identifiable cost of the accommodation, including the
7 costs of loss of productivity and of retaining or hiring employees or
8 transferring employees from one facility to another, in relation to
9 the size and operating cost of the employer.

10 (ii) The number of individuals who will need the particular
11 accommodation for a sincerely held religious observance or
12 practice.

13 (iii) For an employer with multiple facilities, the degree to which
14 the geographic separateness or administrative or fiscal relationship
15 of the facilities will make the accommodation more difficult or
16 expensive.

17 (c) An accommodation shall be considered to constitute an undue
18 hardship if it will result in the inability of an employee to perform
19 the essential functions of the position in which he or she is
20 employed.

21 (d) (i) The provisions of this subsection q. shall be applicable
22 only to reasonable accommodations of religious observances and
23 shall not supersede any definition of undue hardship or standards
24 for reasonable accommodation of the disabilities of employees.

25 (ii) This subsection q. shall not apply where the uniform
26 application of terms and conditions of attendance to employees is
27 essential to prevent undue hardship to the employer. The burden of
28 proof regarding the applicability of this subparagraph (d) shall be
29 upon the employer.

30 (cf: P.L.2007, c.325, s.2)

31

32 2. (New section) An employer, including the State and any
33 political subdivision, shall provide reasonable break time each day
34 to an employee, as needed, for the employee to express breast milk
35 for her infant child. An employer is not required to provide break
36 time under this section if to do so would unduly disrupt the
37 employer's operations.

38

39 3. (New section) An employer shall make reasonable efforts to
40 provide a room or other location, in close proximity to the work
41 area, other than a toilet stall, where the employee can express her
42 milk in privacy. The room or location may include the place where
43 the employee normally works if it otherwise meets the requirements
44 of this section.

45

46 4. (New section) It shall be an unlawful practice for an
47 employer to violate any provisions of sections 2 or 3 of this act. An
48 employer who violates the provisions of sections 2 or 3 of this act

1 shall be liable to a civil penalty of not less than \$500 for the first
2 violation, not less than \$750 for the second violation, and not less
3 than \$1,000 for the third and each subsequent violation. The civil
4 penalty shall be collected pursuant to the "Penalty Enforcement
5 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), in a summary
6 proceeding before the municipal court having jurisdiction. An
7 official authorized by statute or ordinance to enforce the State or
8 local health codes or a law enforcement officer having enforcement
9 authority in that municipality may issue a summons for a violation
10 of the provisions of sections 2 or 3 of this act, and may serve and
11 execute all process with respect to the enforcement of this section
12 consistent with the Rules of Court of the State of New Jersey. A
13 penalty recovered under the provisions of this section shall be
14 recovered by and in the name of the State by the local health
15 agency. The penalty shall be paid into the treasury of the
16 municipality in which the violation occurred for the general uses of
17 the municipality.

18
19 5. This act shall take effect 90 days after enactment.
20
21

22 STATEMENT 23

24 This bill expands certain civil rights protections under the "Law
25 Against Discrimination" P.L.1945, c.169 (C.10:5-1 et seq.) to
26 include pregnancy, childbirth, breast-feeding or expressing milk or
27 related medical conditions. Under this bill, it would be a civil
28 rights violation for a working woman to be fired or otherwise
29 discriminated against on the basis of pregnancy, childbirth, or
30 related medical conditions or because of breast-feeding or
31 expressing her milk during breaks.

32 The bill requires employers to provide reasonable break time
33 each day to an employee, as needed, for the employee to express
34 breast milk. The bill further requires employers to make reasonable
35 efforts to provide a location where the employee can express her
36 milk in private and imposes a fine for failing to do so.